

1 JUDGE LASNIK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 UNITED STATES OF AMERICA,) NO. CR 02-46RSL
10 Plaintiff,)
11 vs.) DEFENDANT'S RESPONSE TO
12 SCOTT CLANCY,) PROBATION OFFICE SENTENCING
13 Defendant.) RECOMMENDATION
14

15 Scott Clancy, by his attorney, Carol Koller, submits this response to the
16 Sentencing Recommendation of the probation office, received by the defense on
17 October 11, 2006.

18 **I. BACKGROUND**

19 Scott Clancy has been found to have violated his supervised release by using the
20 credit card of another individual to make three payments and purchases without
21 authorization. The total loss to the credit card holder, an individual with whom Scott
22 Clancy had a brief romantic relationship, was \$775. The credit card holder has since
23 been reimbursed for part of the loss, and had an additional position of the loss credited to
24 his card after purchased items were returned. His loss is \$245.

25 Scott Clancy could not admit the violations, because they charged new criminal
26 conduct which potentially could be prosecuted in state court. However, with

1 Mr. Clancy's agreement, counsel advised the prosecutor that the government's evidence
 2 would be uncontested, and that she would conduct cross examination for clarification
 3 only. This is what occurred at the evidentiary hearing in Magistrate Court, at which
 4 Mr. Clancy was thus found to have committed the alleged violation.

5 **II. Appropriate Disposition**

6 The sentencing recommendation document submitted to this Court by the
 7 probation office omits key facts regarding the circumstances under which Scott Clancy
 8 committed the violation. It is true that Mr. Clancy fell back, on a minor scale, into his
 9 old pattern of stealing from someone with whom he had formed a romantic relationship.
 10 However, it is important to take into account that this happened during a time when
 11 Mr. Clancy was not able to take his prescribed psychotropic medication, due to
 12 unemployment and an inability to privately pay for his prescription drugs.

13 Until about six weeks before the violation behavior in May 2006, Mr. Clancy had
 14 been employed as a baker for the student cafeteria at Seattle University. While he was
 15 experiencing considerable success in that position, it did not provide him necessary job
 16 stability, because the job included regular layoffs during summer and winter school
 17 breaks. Ergo, in March of 2006, Mr. Clancy began to look for summer work in
 18 anticipation of a scheduled layoff in mid-May of 2006, or, in the alternative, a
 19 permanent job which would keep him employed year round. He was unable to find
 20 temporary summer work, but received a job offer in early April 2006, for what he
 21 understood to be a baking position at Little Ray's Bakery in the Southpark section of
 22 Seattle. However, when Mr. Clancy began the job, he learned that it was a warehouse
 23 rather than a baking position. He did not have the physical stamina or organizational
 24 ability to handle the job, and so was forced to resign after about two weeks. His benefits
 25 had not yet begun at Little Ray's, so when his medications ran out in mid-April, he was
 26 unable to afford the \$350 for his lithium, anti-anxiety drug, and antidepressant.

1 Mr. Clancy continued to look for work, and ultimately found his current job, as a
 2 baker for Belle Epicurean,¹ toward the end of May 2006. His medical benefits from
 3 Belle Epicurean began on July 1, 2006, and Mr. Clancy is now restabilized on his
 4 medication.

5 Mr. Clancy readily acknowledges that he suffers a serious problem with impulse
 6 control. He feels that his medications, especially the lithium provide him with the ability
 7 to stop and think before making what he describes as “stupid decisions” out of financial
 8 desperation. Significantly, the violation behavior here occurred at a time when
 9 Mr. Clancy was unable to take his required medications. One of those medications,
 10 lithium, is prescribed only for bipolar disorder, a major mental illness which has, as one
 11 of its hallmarks, a lack of impulse control. Given that Mr. Clancy has been prescribed
 12 lithium, and that he feels that this, in combination with anti-anxiety and antidepressant
 13 medication does improve his ability to think before he acts, it is fair to assume that he
 14 suffers from more serious mental health problems than even those described in the
 15 probation department’s report.

16 As the sentencing recommendation of the probation department does
 17 acknowledge, Mr. Clancy functions poorly under stressful situations. Compliance with
 18 supervision, and continued law-abiding behavior is best achieved when Mr. Clancy is
 19 employed, medicated, has stable housing and is participating in regular therapy. He was
 20 unemployed, unmedicated, and facing issues about losing his therapy at the time the
 21 violation occurred

22 In regard to the counseling situation, Mr. Clancy undertook counseling with
 23 Michael Raitt believing he had mental health coverage under his medical insurance
 24 policy from Seattle University. He had chosen an expensive plan because it purported to

25 ¹Belle Epicurean has a retail outlet in the Olympic Fairmont Hotel, and also sells baked
 26 goods at outdoor farmer’s markets in the Seattle area during the summer.

1 cover mental health treatment. Only after many sessions, did he learn that his insurance
 2 did not cover Mr. Raitt, who was not within the network of covered providers.

3 Mr. Clancy was thus faced with a struggle to pay for an arrearage to Mr Raitt he did not
 4 realize he was accumulating². As a result of the financial issue, he has been terminated
 5 from therapy by Mr. Raitt. He has gone through the intake procedure in order to begin
 6 regular therapy at Seattle Counseling Service, where he has been a client in the past.
 7 Seattle Counseling Service will charge him an affordable, sliding scale rate, based upon
 8 his income.

9 While Mr. Clancy's reversion to prior anti-social behavior is indeed disturbing, it
 10 is also understandable. In a perfect world, his probation officer would have been
 11 cognizant of the medication and counseling issues, and had the ability to tap into
 12 resources to keep Mr. Clancy on both medication and in counseling. Obviously,
 13 supervision by a busy probation officer who is not able to access emergency financing
 14 for indigent probationers in need of mental health counseling and drugs is not a perfect
 15 situation. However, failures of the supervisory and mental health systems should not
 16 necessarily result in incarceration of the individual whose service network failed.

17 Moreover, it is significant that while Mr. Clancy did revert to his previous,
 18 disturbing pattern of theft, his lapse was brief and on a small scale. As this Court is
 19 aware, undersigned counsel has represented Mr. Clancy for many years, and feels very
 20 well acquainted with him. This "relapse" was different than those seen in the past
 21 where Mr. Clancy would spin into an abyss of dishonesty and denial. This time, he
 22 quickly realized he was headed in the wrong direction and was able to reach out to
 23 supportive friends to provide him with the external control when his own impulse

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 26 ²It is somewhat disturbing that this counselor, whose credentials are unknown, but clearly
 less than a Ph.D., was charging Mr. Clancy \$100 per hour for his services, and spending up to 1/3
 of each of these sessions discussing payment issues.

1 control was lacking due to an absence of needed medications. The behavior stopped
2 quickly, and Scott Clancy made all the right decisions about making right the wrong,
3 picking himself up, getting another job, getting back on his medications, and resuming a
4 law abiding life. He has been leading a successful and law abiding life for the ensuing
5 five months leading up to this disposition hearing.

6 Incarceration would result in Mr. Clancy losing a job at which he is succeeding,
7 at the time of the year when his employer will be forced to replace him immediately, due
8 to increased business over the upcoming holiday season. Were intermittent confinement
9 available, undersigned counsel would recommend a sanction of weekends of
10 incarceration. However, experience in other cases has revealed that, notwithstanding
11 statutory provision for intermittent confinement, the Bureau of Prisons has effectively
12 overruled the statute by refusing to accept inmates for service of sentences on weekends
13 or any other intermittent basis.

14 A term in a halfway house is a severe sanction, since it will result in Mr. Clancy
15 losing his apartment as well as significant freedoms. The defense urges this Court to
16 limit its sanction to a halfway house term, in order to enable Mr. Clancy to retain his
17 employment, his medical benefits, and to continue in counseling.

18 DATED this 10th day of October 2006.

19
20 Respectfully submitted,

21 s/CAROL KOLLER
22 WBSA No. 19685
23 Attorney for Scott Clancy
24 Federal Public Defender
25 1601 Fifth Avenue, Suite 700
Seattle WA 98101
206/553-1100 voice
206/553-0120 facsimile
carol_koller@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Janet Freeman
Assistant United States Attorney
700 Stewart St., Suite 5220
Seattle, WA 98101-1271

and I hereby certify that I have emailed the document to the following non CM/ECF participants:

Michael S. Larsen
United States Probation Office
700 Stewart St., Ste. 11101
Seattle, WA 98101

s/Carol Koller
WSBA No. 19685
Attorney for Scott Clancy
Federal Public Defender
1601 Fifth Avenue, Suite 700
Seattle WA 98101
206/553-1100 voice
206/553-0120 facsimile
carol_koller@fd.org